IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.283 OF 2004

In the matter of the
Companies Act, of 1956

And

In the matter of
M/s.Vardhaman
Dyestuff Industries P.Ltd.

Ms.Taramati V.Dharamsey .. Petitioner

Mr.K.J.Hakani for the petitioner

Mr.D.R.Zaiwala i/b Mulla & Mulla & Cragie Blunt & Caroe for the respondent company

CORAM : S.U.KAMDAR, J

DATED : 11th March 2005

P.C.:

1. The present petition is filed u.s.433 and 434 of the Companies Act, 1 of 1956 interalia seeking to wind up the respondent company. The claim in the present petition is RS.1,06,250/-. It is the case of the petitioner that the amount of Rs.1.0 lac was lent and advanced by the petitioner to the respondent company at the rate of interest of 15% p.a. According to the petitioner with interest claim comes to about Rs.1,06,250/-

2. This claim has been resisted by the respondent company interalia on the ground that this is not the amount lent and advanced by the petitioner to the respondent company but the amount has been brought in as a loan from the relatives and friends by one of the promoters Ms.Maneesha Shah towards her contribution in the company.

3.Mr.Zaiwalla, the learned counsel for the respondent company has drawn my attention to clause 62 of the terms and conditions of sanctioned letter issued by MSFC which interalia provides that as a condition to finance the project of the company the promoters shall bring in and / or arrange additional finance by way of unsecured loan as deposit to cover any shortfall that may arise in financing of the project or for working capital. It has been further pointed out to me that under the said clause a condition is imposed that this additional loan amount shall not be withdrawn or repaid by the company till and until the additional loan granted by the corporation are not fully discharged. Mr.Zaiwalla the learned counsel

contends that accordingly the loan amount which has been brought in by Ms.Maneesha Shah from the petitioner who is the friend and or relative of the said Ms.Maneesha Shah cannot be repaid by the company. In view of the said clause it has been contended that this additional loan amount has been brought in the company by both the groups of directors one represented by Ms.Maneesha Shah and other represented by Mr.Zaiwala's client and both the parties have brought in Rs.50.0 lacs each as and by way of additional amount. It has also been pointed out to me by Mr.Zaiwalla that there are disputes and differences between the 2 group of shareholders and or directors and proceedings under 397 and 398 of the Company's Act and already initiated and are pending before the Company Law Board. The issue pertaining to this loan amount is also agitated by said Ms.Maneesha Shah in the said proceedings. It has been therefore contended that there is no question of making payment to the petitioner as no such amount has become payable by the company to the petitioner herein.

4. In the light of the aforesaid contentions and

looking into clause 62 of the said terms and conditions I am of the opinion that there are bonafide defences raised by the company. On my query to the petitioner that through whom the amount of loan lent and advanced to the company. Mr.Hakani, the learned counsel for the petitioner had candidly admitted that through Ms.Maneesha Shah the said amount of loan is lent and advanced by the petitioner to the company. In the light of the aforesaid facts that there are serious bonafide disputes in the present petition and proceedings for winding up cannot be entertained. I accordingly dismiss the petition. However, there shall be no order as to costs.